

THE LAW AND LEGAL RESEARCH IN SWAZILAND

By Buhle Dube and Alfred Magagula

[Buhle Angelo Dube](#) is a human rights lawyer who has previously worked with human rights and other non-governmental organizations in Swaziland holding varied positions such as Project Officer/Researcher. He holds a B.A. (Law), LL.B from the University of Swaziland and is currently pursuing a LLM in Human Rights and Democratization in Africa with the Centre for Human Rights (University of Pretoria). He is also a member on the Board of Trustees of the Centre for Minority Rights and Development Zimbabwe and the Centre for Human Rights and Development, Swaziland.

[Alfred S. Magagula](#) is a student at the University of Swaziland in the final year of his LL.B. He holds a B.A. (Law) from the same university and has done research work with various consultancy firms in Swaziland before. He is a part-time researcher with Panacea Consulting.

Published September/October 2007

Table of Contents

- [Introduction](#)
- [Historical Overview](#)
- [Sources of Swaziland Law](#)
- [Constitution of Swaziland](#)
- [The Legislature](#)
- [Precedent](#)
- [Common Law](#)
- [Authoritative Texts](#)
- [International Law](#)
- [Customary Law](#)
- [Royal Decrees](#)
- [Subordinate Legislation](#)
- [The Justice System in Swaziland](#)
- [The Constitution and the Judiciary](#)
- [Chapter outline of the Constitution](#)
- [Chapter One – The Kingdom and its territory](#)
- [Chapter Two – The Office of the King](#)
- [Chapter Three – Fundamental Rights and Freedoms](#)
- [Protection of the Right to Life](#)
- [Protection of the Right to Personal Liberty](#)
- [Protection of Women's Rights](#)
- [Chapter Four – Citizenship](#)
- [Chapter Five – Directive Principles of State Policy](#)
- [Chapter Six – Executive](#)
- [Chapter Seven – Legislature](#)
- [Chapter Eight – Judiciary](#)
- [Infringement on Judicial Independence](#)
- [Judicial Tenure and Remuneration](#)
- [Removal of Judges from Office](#)
- [The Supreme Court](#)
- [The High Court](#)
- [Magistrates' Court](#)
- [Specialist Courts in Swaziland](#)
- [The Industrial Court](#)
- [Swazi National Courts](#)
- [Children's Court](#)
- [Legal aid](#)
- [Civil Court Legal Aid](#)
- [Legal Aid by Private Institutions](#)
- [Law Reports](#)
- [Government Gazettes](#)
- [Law Schools](#)
- [Access to Information](#)
- [The Law Society of Swaziland](#)
- [Civil Society](#)
- [Websites Visited](#)

Introduction

Swaziland lies between South Africa and Mozambique in the south eastern part of Africa. The country measures approximately 17000 sq km with a population of approximately 1 million people. The country's leadership is a hereditary kingship.

Historical Overview

Historically, the king was viewed as his people's mouthpiece, neither an absolute monarch nor a dictator.^[i] For more than five decades whilst still under colonial rule Swaziland was administered through a system of native authorities. During this time, the king was a paramount chief exercising indirect rule over the Swazi nation. Through this system of governance, the royal family managed to slowly build authority over the allocation of land, particularly tribal land (Swazi nation land) which it still administers today through a system of chieftainship. Gradually this pre-colonial perception of the monarch eroded as it began to view itself as an institution that is above accountability and one that derived its power from God.^[ii] During colonial times, Sobhuza II was initially paramount chief and later king of Swaziland from 1921 to 1982 when he died. Much of this transformation took place during his lengthy reign. King Sobhuza was forced to form his own political party in 1964, despite his resentment of political parties. King Sobhuza and his clique viewed political parties as direct threats to his authority, 'unSwazi' and foreign elements that led to bad governance, rendering the country ungovernable. The Imbokodvo National Movement (IMN) was formed due to mounting political pressure from other political formations coupled with King Sobhuza's failure to win independence from the British on the basis of a purely monarchical system.^[iii] Interestingly to this day, under the reign of King Mswati III, Sobhuza's successor, political parties are still frowned upon in Swaziland. Hence most politicians believe that democracy and political parties are foreign concepts that cannot be tolerated; but when pushed further, some claim that there is one political party in existence, which represents the interests of all the Swazi people. This party is the royalist INM. Political parties were pivotal in the push for an independent Swaziland. These parties called for independence, universal adult suffrage, and a constitutional monarchy with limited powers. In the pre-independence elections of 1964 and 1967, the royalist INM was victorious, winning all 24 seats in the new national assembly. Since the Dlamini aristocracy (the dominant Swazi clan) monopolised the assembly, and legislation required the King's approval, the monarch was *de facto* in charge of the government. After a four-year period of limited self-rule, Swaziland gained independence on 6 September 1968 and inherited a Westminster-model parliamentary system that provided for a constitutional monarchy, a prime minister and multi-party politics. The British also left Swaziland with a dual legal system comprising Roman-Dutch law and customary law in which rural constituencies under the control of hereditary chiefs reported directly to the King. This dual legal system still exists in Swaziland today.

Sources of Law

Swaziland does not have a single code containing its laws. These are drawn from a variety of sources. The following are sources of Swaziland law:

- Constitution
- Legislation
- Common Law
- Judicial precedent
- Customary Law
- Authoritative texts
- Decrees

Constitution of Swaziland

As stated above, the 1968 (independence) constitution provided for a constitutional monarch with a prime minister, a parliament and political parties.

On April 12 1973, the then head of state King Sobhuza II unilaterally repealed the independence constitution through a royal decree, except for a few provisions that were saved. The include provisions relating to the office of the Attorney General. Through the King's Proclamation to the Nation No.12 of 12 April 1973 the King assumed all legislative, executive and judicial powers. This decree came to be known widely as the '1973 Decree'.

This position subsisted until a new constitution was adopted in June 2005, and came into effect in February 2006. The new constitution does not specifically provide for the abrogation of the 1973 Decree, but asserts its own supremacy and further provides that any law that is inconsistent with the constitution shall be null and void. Consequently, the provisions of the 1973 Decree that are inconsistent with the Constitution are of no force and effect.

Legislation

Legislation in Swaziland is contained in statute books that are available in most libraries. The Ministry of Justice law library and the Government printers in Mbabane (Webster Print) offer legislation for sale. There are however difficulties in finding older legislation at the Government printers, such as legislation from the early 80s. The national libraries in both Mbabane and Manzini have most volumes of the laws of Swaziland. Both Acts of Parliament and royal decrees are published in government gazettes available at the government law library and the government printers. The cost of these is sufficient to turn away the indigent information seeker, since government charges E1.00 per page (approximately US \$0.2) and the printers charge E25.00 per bound copy (approximately US \$4). A cheaper alternative is to access the laws of Swaziland in the libraries and make photocopies. The major obstacle to that is the failure to update the volumes of laws as and when new Acts are enacted or amendments are made.

The [government website](#) is outdated and does not contain any legislation. Private companies' websites can be consulted, but the problem is that since these entities have particular focus areas, the legislation they publish will likely be limited to these areas. For environmental laws, the [Environmental Centre for Swaziland](#) would be helpful. Another helpful website for legislation would be the one for the parastatal [Swazi National Trust Commission](#). For labour related legislation, the [Conciliation, Mediation and Arbitration Commission](#)'s website would be useful.

Constitutionally, legislation refers to laws that have been passed by parliament and have been assented to by the King. Subsidiary legislation refers to laws passed by other bodies to which parliament has validly delegated such legislative powers. These include government gazettes, ministerial orders, ministerial regulations and municipal bye-laws.

In Swaziland the supreme legislative authority vests in the King-in-Parliament. The King and parliament are empowered by the Constitution to make laws for the peace, order and good governance (section 106(a) & (b)). Section 106(a) clearly states that the supreme legislative authority of Swaziland rests in the King-in-parliament. These powers are exercised through bills passed by both chambers of parliament and assented to by the King under his hand (section 107).

Parliament can confer power on any authority to create binding laws. Currently parliament is a bicameral system consisting of both the house of Assembly and Senate. In terms of the Constitution, legislation brought through parliament has to be scrutinised by both houses of parliament before

it goes for assent to the King (section 107). A bill shall not become law unless the King has assented to it and signed it in token of that assent (section 108). By virtue of section 77(5)(a), the Attorney General (AG) is charged with drafting and signing all bills presented before parliament. Subsection (6) empowers the AG to delegate these functions to any of his/her subordinate officers.

The Constitution further provides that the Attorney General shall cause a bill that has been duly passed and assented to in accordance with this constitution, to be published in the gazette as law as soon as practicable (section 109(i)). Laws made by the king and parliament in terms of this constitution shall be styled "Act of Parliament", and the words of enactment shall be "enacted by the king and parliament of Swaziland" (section 109(4)).

Amendment of laws usually poses challenges for the information seeker as government is slow to publish comprehensive updated versions of amended laws. Of note here is the Criminal Procedure and Evidence Act (CPEA) which although recently amended, such amendments cannot be found in one comprehensive document. It is still scattered and can be found in other legal instruments apart from the CPEA, such as government gazettes. This impedes access to information.

The process of amending laws in Swaziland has to be done through introduction of the particular legislation in parliament by the ministry responsible, known as a 'line ministry'. This is the ministry responsible for the administration of that particular Act. The administration of Acts of parliament is an executive function, one that the King can delegate to any member of Cabinet. Section 64(3) of the Constitution provides that the King may exercise the executive authority either directly or through the cabinet or a minister. A constitutional anomaly exists today regarding the Game Act (Amended) No. 4 of 1991, which is administered by a private institution contrary to section 64(3). Section 70 further provides that the King may assign to the Prime Minister or any other minister responsibility for the conduct of any business of the Government including the administration of any department of Government. The Game Act is a piece of legislation that governs matters related to preservation of game and other types of wildlife in Swaziland. This Act together with the Convention on International Trade in Endangered Species (CITES) are administered by a company called Big Game Parks (BGP). [\[iv\]](#) BGP is a juristic person, and is neither the Prime Minister nor minister to whom responsibility for conducting government business can constitutionally be assigned. The administrative power was transferred through some unknown instrument from the relevant line ministry to the King's Office and eventually to BGP. Hence there is no line ministry through which to amend this Act. The main problem with the Game Act is its retroactive application coupled with its granting of immunity from prosecution to game protection officers (known as game rangers), who also happen to be employees of BGP.

The contentious provision of the Game Act, section 23 reads as follows:

- (1) The Minister after consultation with the Swaziland National Trust Commission may from time to time appoint game rangers for good and sufficient reason may remove or dismiss any such game ranger.
- (2) Any game ranger or person acting on the instructions of a game ranger shall have the powers and the right:
 - (a) to carry and use firearms in the execution of his official duty provided such firearms are properly licensed;
 - (b) to use firearms in self defence or if he has reason to believe that his life, or the life of any of his colleagues, is threatened or is in danger;
 - (c) to arrest without a warrant any person suspected upon reasonable grounds of having contravened any of the provisions of this Act or regulations made thereunder;
 - (d) to use reasonable force necessary to effect the arrest of or to overpower any person who resists arrest and who is suspected on reasonable grounds of having contravened any of the provisions of this Act;
 - (e) to carry out searches without a warrant under section 22 of this Act.
- (3) A game ranger or person acting on the instructions of a game ranger shall not be liable to prosecution in respect of any act or omission done in the exercise of his powers or rights under subsection (2) of this section.

The Constitution in section 69(2) clearly spells out that part of the responsibility of cabinet ministers is to report to parliament on their administration of government business. The administration of the Game Act by a private company prevents this from happening and violates the constitution. Since the operation of the Game Act was backdated through Legal Notice No.138 of 1997 to give immunity from prosecution to perpetrators of violence, section 119 of the Constitution is thereby violated. This section provides in subsection (b)(ii) that parliament or any other authority or person has no power to pass any law which operates retroactively to adversely affect the personal rights and liberties of any person. The fact that victims of human rights violations committed by game rangers in 1992, who were given backdated immunity in 1997 for their acts committed five years earlier cannot access justice places such victims in adverse circumstances. Such immunity granting legislation therefore violates the Constitution.

Precedent

Precedent forms part of the law of Swaziland. Decisions of superior courts of record are therefore binding on lower courts. Decisions from South African courts are only persuasive, and courts refer to them in formulating their decisions. Decisions from similar jurisdiction can also be cited for their persuasive value. Magistrates' courts decisions do not become precedent since these are lower courts. They are however bound by decisions of the High Court and the Supreme Court of Appeal. Precedent assists in consistency in legal interpretation and application of the law. It has also been justified for bringing certainty and uniformity to the law. However, precedent has been blamed for causing rigidity of legal systems, preventing development of the law.

Common Law

Swaziland also applies the common law, which refers to unwritten law or law from non-statutory sources, but excludes Swazi customary law. Section 252 of the Constitution provides that the principles and rules that formed, immediately before 6th September 1968, the principles and the rules of Roman-Dutch Common law as applicable to Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland except where and to the extent that these principles or rules are inconsistent with this constitution or a statute. The Common Law of Swaziland is primarily Roman Dutch Common law as applied in the Transvaal in 22nd February 1907.

Authoritative Texts

Written works of eminent authors have persuasive value in the courts of Swaziland. These include writings of the old authorities as well as contemporary writers from similar jurisdictions.

International Law

Swaziland is signatory to many international instruments. Although the country is quick to ratify, implementation is often slow or never materialises. Swaziland belongs to the dualist tradition, thus views international law and domestic law as two separate legal systems. Hence domestication of international law by an Act of Parliament is necessary before international law can be applied. This of course excludes customary international law which is binding on all states. The Constitution in section 238 provides that unless an international agreement is self-executing, it will not become law in Swaziland unless enacted into law by Parliament. The Attorney General is mandated by section 77(5)(b) to draft and peruse treaties and agreements the government of Swaziland is party to.

Customary Law

Since Swaziland is perceived to be a homogenous society with minimal divisions along clan or tribal lines, it is largely believed that its customary law is uniform, taken from practices and customs that have obtained since time immemorial. However, for custom to be worthy of the name, it must be certain, reasonable, practiced by many people and must be notorious. It must attain the recognition of formal law. The custom must be so notorious that it must gain lawful recognition.

The application of customary law is sanctioned by section 252(1)(c) of the Constitution which provides that the principles of Swazi law and custom are recognised and adopted and shall be applied and enforced as part of the law of Swaziland. Subsection (3) thereof provides that the provisions of subsection (2) do not apply in respect of any custom that is and to the extent that it is inconsistent with a provision of the Constitution or a statute and enforced as part of the law of Swaziland. These constitutional provisions buttress those of the Swazi Courts Acts No. 80 of 1950 which provide that where customary law is repugnant to natural justice, it shall to the extent of that repugnancy be null and void. However, instances where customary law is declared null and void for its failure to comply with natural justice are hard to come by. The denial of legal representation under customary criminal procedure is a clear infraction of the rules of natural justice and the right to a fair trial.

The customary law of Swaziland is not codified. It is passed down from generation to generation by oral tradition. This has led to varying, almost always conflicting versions of what real Swazi law and custom is. There were moves towards the end of the last decade to codify all Swazi customary law but to this day the code has not been published. Today Swazi law and custom is interpreted and applied almost exclusively by Swazi Courts established under the Swazi Courts Act No. 80 of 1950, who apply it in cases of minor infractions, such as petty theft and domestic quarrels. Of late, however, the trend has been for these courts to apply customary law in cases of domestic violence, robbery and theft.

Swazi customary law is also applied at the chieftaincy level to handle disputes between residents in the rural communities where chiefs are the traditional leaders. It is also applied by the King acting in his capacity as Ingwenyama. Acting under these powers, the King can issue any orders and is advised by a council of elders. However, his powers have been curtailed by the new Constitution in section 140(1) which provides that judicial powers shall only vest in the judiciary. This has not stopped the King from overstepping these boundaries. Acting under customary law, in 2006 the King issued orders for the eviction without compensation of over 20 families from the Hlantambita/ Sigaweni area despite the Constitution providing that there shall be no arbitrary eviction. This eviction order was issued under customary law.

Besides the constitution there are other pieces of legislation which recognise the application of Swazi customary law in certain respects. These are:

- The Marriage Act No.17 of 1964
- The Administration of Estates Act 1902
- The Swazi Courts Act No.80 of 1950

In applying Swazi law and custom, courts can sit with assessors who guide the court on what would be regarded as custom within the wide plethora of customary provisions. Criteria such as uniformity and consistency of application are used here.

Royal Decrees

Prior to the coming into force of the Constitution, the King had power to rule by decree, hence King Sobhuza's unilateral abrogation of the independence constitution in 1973 through a royal proclamation. The new constitution however only gives the King power to make laws in parliament. Section 107 of the Constitution provides that the power of the King and parliament to make laws shall be exercised by bills passed by both chambers of parliament and assented to by the King. This partially curbed the abuse of power to issue decrees which threatened the rule of law in that country. In 2000, the Court of Appeal in the case of Professor Dlamini v The King (Appeal Case No.41/2000) had declared the Non-Bailable Offences Order No.14 of 1993 unconstitutional. The order prohibited the granting of bail to suspects for a certain class of stipulated crimes, including rape, murder and armed robbery. The executive reacted to this by swiftly procuring the promulgation of Decree No.2 of 2001 which purported not only to validate or re-enact the Order but to make other far reaching constitutional changes.

The public outcry that ensued led to the promulgation of yet another decree, Decree No.3 of 2001, which purported to repeal the earlier Decree No.2 and the section providing for refusal of bail in respect of certain crimes under the 1993 Order. In issuing both Decrees, the King declared that he was exercising powers vested in him by the King's Proclamation to the Nation of 1973 (the 1973 Decree).

Subordinate Legislation

Subordinate legislation refers to any instrument having force of law made under an Act of Parliament. In terms of section 253(1) of the constitution Parliament has power to make such subordinate legislation. This could refer to rules and regulations made under any Act of Parliament.

The Justice System in Swaziland

At the apex of the Swaziland justice system is the Supreme Court, which is the final court of appeal on all matters. It has a supervisory and review jurisdiction over all the courts of Swaziland. The High Court is second after the Supreme Court, and it is vested with powers to handle matters with a constitutional bearing. It also has unlimited original jurisdiction in civil and criminal matters. Parallel to the High Court are the Industrial Court and Industrial Court of Appeal, which are specialist courts dealing exclusively with industrial and labour matters. Magistrates Courts follow below the High Court. Swazi National Courts were set up to deal with issues involving Swazi nationals under customary law. Over the years the precise definition of Swazi national has become blurred as more non-nationals were tried and convicted by these courts, presided over by court presidents, who are supposedly well versed in Swazi law and custom. The 1998 Swazi Administration Order set up Chiefs Courts which were to work in similar

fashion to the Swazi National Courts, but this Order was struck down by the Court of Appeal. The judiciary faced a number of challenges in recent years, mainly from government's refusal to obey court orders, resulting in the en masse resignation of judges of the former Court of Appeal. Tenure of office was also a challenge, as at the beginning of 2007 only two judges of the High Court occupied office after their compatriots' one-year contracts were not renewed.

The Constitution and the Judiciary

The 2006 Constitution ushered in a departure from the position laid down by the 1973 Decree which vested all judicial, executive and legislative power in the King. Judicial power now exclusively vests in the judiciary in terms of Section 140(1) of the Constitution. To avoid a repeat of the 1973 usurpation of power by the monarch, the Constitution further provides that no organ or agency of the Crown shall be conferred with final judicial power.

Section 138 of the Constitution further provides that justice shall be administered in the name of the Crown by the judiciary which shall be independent and subject only to the Constitution. Section 139(1) provides that the judiciary shall consist of

- (a) The Supreme Court of Judicature comprising –
 - (i) The Supreme Court, and
 - (ii) The High Court
- (b) Such specialised, subordinate and Swazi courts or tribunals exercising a judicial function as Parliament may by law establish.

Chapter Outline of the Constitution

The Constitution of Swaziland is the supreme law and if any other law is inconsistent with the Constitution that other law shall, to the extent of its inconsistency, be void (section 2(1)). Therefore Swaziland has constitutional supremacy.

The Constitution was adopted in July 2005 after consultations with the citizens of Swaziland and came into effect in February 2006. It purports to be an autochthonous document. These consultations are disputed in some quarters, as there are claims of intimidation and denial of group submissions during the process. The Constitution sets out clearly the state structure, bill of rights, the separate arms of government as well as other administrative organs such as the public service commission.

Below is a chapter-to-chapter analysis.

Fundamental rights and freedoms	Section 14
Protection of right to life	Section 15
Protection of right to personal liberty	Section 16
Protection from slavery	Section 17
Protection from inhuman or degrading treatment	Section 18
Protection from deprivation of property	Section 19
Equality before the law	Section 20
Right to a fair hearing	Section 21
Protection against arbitrary search or entry	Section 22
Protection of freedom of conscience or religion	Section 23
Protection of freedom of expression	Section 24
Protection of freedom of assembly and association	Section 25
Protection of the freedom of movement	Section 26
Rights and protection of the family	Section 27
Rights and freedoms of women	Section 28
Rights of the child	Section 29
Rights of persons with disabilities	Section 30
Abolition of status of illegitimacy	Section 31
Rights of workers	Section 32
Right to administrative justice	Section 33
Property rights of spouses	Section 34
Enforcement of protective provisions	Section 35

Chapter One

Swaziland is defined as a unitary sovereign and democratic kingdom. This chapter sets out the territorial boundaries of Swaziland, the anthem, the flag and the languages of the country. The supremacy of the Constitution is also set out in this chapter. It is interesting to note that the Constitution further imposes a duty on citizens to uphold democracy in section 63. It further mandates citizens to promote the rule of law and to uphold and defend the Constitution.

Chapter Two

This Chapter refers to the King and Ingwenyama as a symbol of unity and eternity of the Swazi nation. It also talks about the rights, prerogatives and obligations, succession to the throne and the royal family set-up. The Ingwenyama is the traditional head of state and is chosen by virtue of the rank and character of his mother in accordance with Swazi law and custom. He enjoys the same legal protection and immunity from legal suit or process as the King.

Chapter Three

Chapter three is concerned with the protection and promotion of fundamental rights and freedoms. The new Constitution in general fails to adequately protect fundamental human rights, civil liberties and freedoms of the individuals, in that it gives rights with the one hand and wrest them away with the other. The rights given are subject to limitations, the effect of which is to undermine the very rights the Constitution seeks to protect and guarantee. This appears more clearly when one reads Chapter III together with section 165(3)(c) in that the commission on human rights shall

not investigate certain matters, especially matters of royal prerogative. This is worrying given the fact that many human rights violation occur under royal prerogative. The Constitution of Swaziland thus does not make adequate provision for the enjoyment of fundamental human rights.

The bill of rights shall by virtue of section 14(2) be enforceable by all structures of government, natural as well as artificial persons. The difficulty is that the composition of parliament in terms of sections 95 and 96, and the judiciary in accordance with section 160, is so weak that it will be difficult to enforce the rights if the institutions created to give effect thereto are themselves not strong and independent.

Protection of Right to Life

Swaziland still retains the death penalty. Whilst section 15 states that no person shall be deprived of life, it permits the use of the death penalty in the execution of the sentence of a court in respect of a criminal offence of which that person has been convicted. Although the death penalty is not mandatory this provision is clearly not enough to ensure the full guarantee of the right to life. The right to life, as guaranteed by the Second Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and African Charter on Human and Peoples' Rights, is the most fundamental of all the human rights. Imposition of the death penalty itself is not only a violation of the right to life, but also the ultimate form of cruel, inhuman or degrading punishment or treatment.

Protection of Right to Personal Liberty

The protection guaranteed in international standards is missing or not fully recognised and entrenched in this constitution. For example, international standards of fair trial provide that anyone arrested or detained must be notified at the time of the arrest of the reasons of their arrest or detention and of their rights, including their right to counsel. This information is essential to allow detained persons to challenge the lawfulness of their arrest or detention and, if they are charged, to start the preparation of their defence. It is essential, against arbitrary arrest and detention, to ensure that no detainee is held in incommunicado detention, or in a place other than an official detention centre or prison, or held in any manner intended to frustrate proper and prompt access to the detainee by legal representatives, doctors or next of kin. Finally, it is not clear why this section on the protection of the right to personal liberty should include exceptions allowing for orders requiring a person to remain within a specified area or prohibiting that person from being within such an area as envisaged by section 16(2)(j)(i-ii). There's a similar provision under section 26(6), which contains a very far-reaching limitation clause. Section 26(6) purports to elevate Swazi law and custom above the Constitution. It provides that nothing contained or done under the authority of any provision of Swazi law and custom shall be held to be inconsistent with or in contravention of that section.

The potential abuse inherent in these provisions is evident from the history of the human rights violations committed against the families forcibly evicted from Macetjeni/Kamkhweli in 2000 and by the government's subsequent refusal to abide by the numerous court rulings upholding the right of the families to return to their homes.

Protection of Women's Rights

Section 27(2) provides that marriage shall be entered into only with the free and full consent of the intended spouses. The preceding section 27(1) refers to men and women of marriageable age having the right to marry and found a family. Section 34(2) obliges parliament to take legislative steps to regulate the property rights of the spouses, with the implication in subsection (1) that the rights will be described in a gender neutral manner. While sections 27(1) and (2) are consistent with the provisions of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and should when implemented prevent forced marriages, they may not be sufficient to protect the girl child against abductions and forced or early marriages. Under customary law age in years does not determine a girl's capacity to marry. Girls below marriageable age still continue to be forcibly married under customary law, which knows no consent on the part of the woman, in marital issues.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (African Women's Protocol) provides that state parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall also enact appropriate national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties, and also to ensure that the minimum age of marriage for women shall be 18 years. The need for greater constitutional protection of the rights of the girl child is of urgent concern, particularly in light of the disproportionate impact of the HIV/AIDS pandemic on adolescent girls and young women. The Marriage Act 1964 places the age of consent for marital purposes at 21 for both males and females. However, a girl can lawfully enter into marriage at the age of 18 with full parental consent. That notwithstanding, girls below the age 16 (age of sexual consent) have and continue to be forcibly married under customary law.

Customary law remains a bar to the enjoyment of many marital rights by both men and women. Apart from section 28(1) which provides for marriages to be based on the consent of both parties, section 28(3) also buttresses this provision by providing that a woman cannot be forced to undertake a custom to which she is by virtue of conscience opposed. Several customs are still practiced today which go against these provisions. These include the practice of widow inheritance (kungena/kungenwa), the payment of pride price (lobola) and polygamy.

Despite Section 28(1) read together with section 14(f) which prohibit discrimination on the grounds of sex and gender, amongst other grounds in the political, economic, and social spheres and create legal equality for the first time between men and women, section 44 restricts the right to claim citizenship by birth to a child whose father is not a citizen of Swaziland. It makes no reference to the status of the mother, except in subsection (4) where her Swazi citizenship only becomes relevant to the child should the unmarried father fail to adopt or claim the child under Swazi law and custom.

The Rights of Persons with Disabilities

Section 20(1) provides that all persons are equal before and under the law in all spheres. It further lists in subsection (2) prohibited grounds of discrimination, amongst which is disability. This will go a long way in ensuring that rights of persons living with disabilities are protected and guaranteed. Section 30(1) further provides that persons with disabilities have a right to respect and human dignity and that the government and society shall take appropriate measures to ensure that these persons realise their full potential. Parliament is obliged by subsection (2) thereof to enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives. This provision takes a sharp break from for instance the provision on women's rights, in that it does not limit the provision off facilities for persons living with disabilities to the availability of resources. However, the section is also weakened by its lack of affirmative action provisions to advance the welfare of persons living with disabilities. Unless parliament rescues the situation by enacting affirmative legislation for addressing the past imbalances, the rights of

persons living with disabilities will continue to be violated.

Chapter IV-Citizenship

Citizenship is the state of belonging. Citizenship guarantees rights of nationality and all other rights flowing from being a national of a particular country. Amongst other inherent rights is the ability to pass on to natural and adopted children since they cannot obtain their independent citizenship at that stage. This chapter talks about acquisition and loss of acquisition. Citizenship in Swaziland can be by way of descent, operation of law or birth, marriage or by registration.

Laws pertaining to passing on of citizenship are generally discriminatory against women. As a result women have problems regarding passing on of their citizenship to their children born in or out of marriage with foreign men. Swazi women and their children born in or outside marriage with foreign men experience much frustration in accessing certain state resources and rights which are meant for citizens. These include but are not limited to: access to travel documents and international passports, access to government scholarships for higher education and representing the country abroad. Swazi women are also unable to pass their citizenship to their foreign husbands who are given the same status as any other foreigner.

Most notable is the fact that it is only the father who can confer citizenship on his children (section 43(1)). A Swazi mother cannot confer citizenship on her children unless a Swazi citizen (section 43(4)) fathers them.

Section 53 provides for the establishment of the citizenship board, whose chairperson interestingly announced the Board's stance towards foreign spouses upon his assumption of office. According to this newly sworn in chairperson, Mr. Zonke Khumalo, foreigners who marry Swazis and expect to gain citizenship will be told to go back to wherever they came from. Such comments are very worrying, given that the Board has exclusive authority to grant, deny or cancel citizenship (section 53(1)). Only women can in terms of the Constitution and the Citizenship Act benefit from marriage to Swazi nationals as regards citizenship. In terms of section 44 of the Constitution such a woman must lodge a declaration with the minister responsible for citizenship accepting Swaziland citizenship, and shall become a citizen as from the date of lodgement.

Section 53(1)(a) and (b) confer exclusive authority on the Board to grant or cancel citizenship by registration, and investigate, and where appropriate revoke the citizenship of any person under section 49.

Chapter V-Directive Principles of State Policy

Many of the rights that ought to have been included in the bill of rights have been omitted and provided for under the chapter dealing with principles of state policy (Chapter V) which are not enforceable in the courts, and are accordingly meaningless. For example section 60(8) provides that the state shall promote free and compulsory basic education and ensure the provision of basic health care services to the population. The inclusion of these rights under the principles of state policy makes it difficult for the judiciary to enforce them, or for any aggrieved citizen to pursue them. This situation is worsened by the fact that other substantive provisions of the Constitution on welfare and socio-economic issues are couched in so weak a language that it would be near impossible to enforce them. Section 28(2) is illustrative here. It provides that subject to the availability of resources, the government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

Chapter VI-The Executive

Section 64(1) states clearly that the executive authority of Swaziland vests in the King as head of state and shall be exercised in accordance with the provisions of the Constitution. The King is obliged to defend and protect the Constitution and all laws made under or continued in force by it. This Chapter again marks a departure from the 1973 Decree which vested all executive, legislative and judicial power in the King. In line with the doctrine of separation of powers section 64(1) emphasises that such exercise of executive power by the King shall be in accordance with the Constitution. This serves to curtail any excesses on the use of such power. Under the Constitution the King may directly exercise his functions or delegate to Cabinet Ministers, who shall also act as the King's advisers as regards the exercise of his powers. The Constitution further provides for the appointment of a Prime Minister and a deputy, ministers and their deputies.

The Attorney General

The Attorney General (AG) plays the role of legal advisor to the government, hence the relationship between the office of the AG and the Ministry of Justice. The AG is not part of the cabinet per se but works closely with the executive. Section 77(1) of the Constitution which is the provision creating this office provides that the AG shall be appointed by the King on the recommendation of the Minister for Justice and in consultation with the Judicial Service Commission (JSC). It further spells out the qualifications of the person to be appointed. The AG is the principal legal advisor to government and an ex-officio member of cabinet. The AG represents chiefs in their official capacity in legal proceedings (section 77(3)(c)). The AG however failed to represent a chief and his followers comprising over 20 families (over 200 persons) in 2006 when they were evicted from a farm in Hlantambita without compensation. The AG also advises the King.

Apart from the AG's office, government also makes use of the office of the Director of Public Prosecutions (DPP), mainly in criminal matters. Section 162 sets up this office and provides for the appointment of the DPP. The DPP is appointed by the King on the advice of the JSC, and qualification for appointment to this office is the same as that for a judge of the superior courts (section 162(3)).

Section 162(4) provides that the DPP shall have power in any case in which the Director considers it proper to do so, to

- (a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person against the laws of Swaziland;
- (b) take over and continue any criminal proceedings that may have been instituted or undertaken by any other person or authority;
- (c) discontinue, at any stage before judgment is delivered, any criminal proceedings instituted or undertaken by the Director or any other person or authority; and
- (d) perform such other functions as may be prescribed.

The DPP in person or by delegation to subordinate officers has the power to institute and undertake criminal proceedings against any person before any court. This is a better provision compared to the King's Order in Council No.17 of 1973 which allowed the DPP to prosecute in person or by substitute; which substitute could be Crown Counsel or any person delegated by the DPP. This open-ended means of appointment was curtailed by section 162(5), which provides that the powers under subsection (4) may be exercised by the DPP in person or by subordinate officers acting in

accordance with the general or special instructions of the DPP.

This office can take over and continue or discontinue any criminal proceedings instituted by any other person or authority, at any stage before judgment is delivered. Although individuals can prosecute (that is institute criminal proceedings) at the private instance, (in terms of section 13 of the Criminal Procedure and Evidence Act) the DPP arguably remains the sole prosecuting authority in Swaziland. The drawback of provisions allowing for prosecution at the private instance is that the DPP's office never really gets to totally relinquish its powers to prosecute. Section 162(4) (b) of the Constitution acts as a claw back clause that can easily be open to abuse, to frustrate any attempts at private prosecution. Notwithstanding the issue of a nolle prosequi, the DPP's office can still intercept private prosecution proceedings and take over in its capacity as public prosecutor; thus effectively excluding the person or authority that initiated the proceedings. The DPP's office need not give reasons for such a move, save that it considers it proper to do so.

Further, after rejoining the fray, the DPP's office may then exercise its powers under paragraph (c) to terminate any criminal proceedings, whether started by the office at the public instance or any person at the private instance.

It is submitted that this vicious cycle is open to abuse. In effect it means that prosecution can only be undertaken by the DPP and no other individual or authority.

Chapter VII-The Legislature

The Constitution portrays the system of government in Swaziland as a democratic, participatory tinkhundla based system which emphasizes devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office. Tinkhundla are meeting places under customary law and now represent constituencies for participation in parliamentary elections. The Constitution further provides that parliament shall consist of two houses, that is, the Houses of Assembly and Senate. In terms of section 95(1)(a) membership to the House of Assembly is through ordinary elections and being voted into parliament. The elected members shall not exceed 65 in number. However since political parties are de facto prohibited, members of parliament do not represent political formations or particular ideologies, but represent their constituencies (tinkhundla). Members of parliament are thus elected to the house in their own right. An illustrative case is that of former prime minister of Swaziland and member of the Ngwane National Liberation Congress (NNLC) Mr. Obed Dlamini was elected into parliament as an individual representing his inkhundla, and not as a member of the NNLC. The word de facto is used here because the 1973 Decree which banned political parties is inconsistent with the Constitution and therefore null and void. The Constitution is silent on formation and joining political parties, but the right freedom of assembly and association implies the liberty to form and join political parties. However, a case is still pending in court where the promoters of a political party are suing the Registrar of Companies for refusing to register their political party.

Membership of the House of Assembly can also be via appointment by the King, who has power to appoint 10 members (section 95(1)(b)), half of whom shall be female. Section 94(1) provides that members of the House of Senate shall not exceed 31 in number. Ten Senators are elected by the House of Assembly and half of these must be female. The King then appoints the remaining twenty acting in his discretion after consultation with such bodies as he may deem appropriate. At least eight of these must be female.

Chapter VIII-The Judicature

The Constitution provides that justice shall be administered in the name of the crown by the judiciary, which shall be independent and subject only to the Constitution. The judiciary shall consist of superior court of judicature comprising:

- Supreme court
- High court
- Specialized subordinate and Swazi courts or tribunals exercising a judicial function as parliament may by law establish.

The judiciary has jurisdiction in all matters civil and criminal, including matters relating to the Constitution, and such other jurisdiction as may by law be conferred on it. The superior courts are superior courts of record and have the power to commit for contempt to themselves and all such powers as were vested in a superior court of record immediately before the commencement of Constitution.

Infringement on Judicial Independence

Very wide powers are given to the head of state to appoint judicial officers by the Constitution. The king appoints the Chief Justice. Section 159 establishes the Judicial Service Commission (JSC), which consists of the Chief Justice, two legal practitioners of not less than seven years practice and of good professional standing. It also includes the chairman of the Civil Service Commission (CSC), and two persons appointed by the King. In addition to the first two members, the King appoints the chairperson of the (CSC) and the two legal practitioners. The King also appoints the chief justice. The head of state is thus directly responsible for the appointment of all six members of the JSC who in turn are answerable to the King in several respects. The head of state and his appointees have wide powers. These powers may be exercised to undermine the decision-making and institutional independence of the judiciary. The provisions relating to tenure and dismissal are also of concern for the lack of safeguards and independent procedures.

Of late the independence of the judiciary has been compromised by the granting of short term contracts to two of three acting judges of the High Court upon the expiry of their initial one-year contracts. They were given three-month contracts which expired. They were only confirmed into full time tenure after the expiry of the three months contracts, but one eventually left the bench. Section 153(4) provides that an acting appointment shall not exceed a single renewable period of three months. This seems to have placed the government under pressure to convert the appointments to full time employment to alleviate the backlog of cases in the High Court.

Judges and other judicial officers ought to be hired on full time basis to ensure that they enjoy security of tenure to enable them to carry out their duties in a competent fashion without fear or favour. Judges on contract are under pressure particularly when their contracts are about to end. This is contrary to section 141 of the Constitution which promotes judicial independence and frowns upon infringement on this independence by other organs of government.

Section 157 does not make the situation any better. Appointment of judges on acting or contract basis is detrimental to judicial independence since such judges are put in a state of suspense regarding whether they would be confirmed or not. In such a situation the judge may find himself/herself trying to please those with power to confirm him/her by deciding cases in their favour.

The exercise of the power of appointing judges of superior courts is crucial to the independence of the judiciary. One essential ingredient for judicial independence is the exclusion of political considerations in judicial appointments. The Constitution provides that the King in accordance with the advice of the JSC shall appoint superior court judges. The JSC is the medium through which, it is expected, appointments are to be insulated from politics. It may be worth noting the composition of the JSC here. The King has exclusive powers to appoint judges. From a practical point of view the King appoints judges in consultation with the Minister for Justice and the JSC. It would be fanciful to think that such appointments are free of any political considerations. In any event consultation is hardly a substitute for an independent appointing body; it can very easily be disregarded or made a matter of mere formality.

The involvement of the head of state in the process of appointing judges militates against an independent judiciary. Due to this fact such appointments cannot be free of political considerations. The Constitution still vests, arguably, judicial powers in the King. In a situation where the appointing body is politically influenced one cannot hope for an independent judiciary. People seeking judicial appointments might lobby with the executive with a view to being appointed. Thus such people would feel a sense of obligation to the executive and be inclined to favour the executive in the adjudicatory process. Also the composition of the JSC is compromised because some of its members are members of bodies whose aims are counter productive to the aims of the JSC. Interestingly the owner of Big Game Parks, the company that administers the Game Act and CITES in Swaziland, was once appointed to the JSC despite his alleged involvement in the controversial amendment of the Act to give himself immunity from prosecution.[\[v\]](#)

Judicial Tenure and Remuneration

Section 155 of the Constitution governs issues of tenure of office by judicial officers. Judges of superior courts may retire any time after attaining the age of 65, subject to a service of at least ten years. In case such resignation is not forthcoming, Supreme Court and High Court judges shall vacate office at the age of 75. By virtue of section 208(4), judges along with other specified office holders (such as the AG, the DPP and the Secretary to Cabinet) are paid their salaries and allowances from the Consolidate Fund.

Removal of Judge from Office

A judge appointed on contract shall vacate office at the expiry of that contract. Such removal must be consistent with the provisions of section 158 of the Constitution. One of the requirements of section 158 is that a judge may not be removed except for stated misbehaviour or inability to perform the functions of office arising from infirmity of body or mind. The use of a nebulous term like stated misbehaviour is worrying. The King as the appointing authority after consultation with the JSC is also responsible for removal of judges from office. Where the King is advised that the removal of a judge warrants investigation, he shall refer the matter to the JSC. The King is obliged by subsection (5) to act on the recommendation of the JSC. However, these provisions can easily be and have already been circumvented by the appointment of judges on short term contracts and refusal to renew those contracts upon expiry.

The Supreme Court

Section 145 establishes the Supreme Court of Swaziland, which shall consist of the Chief Justice and not less than four other judges of the Supreme Court. The Supreme Court is the final court of appeal. The Supreme Court replaced the Court of Appeal that existed prior to the coming into force of the Constitution. It has supervisory jurisdiction over all courts of judicature and over any adjudicating authority.

The High Court

Section 150 of the Constitution establishes the High Court, which shall consist of the Chief Justice (ex officio) and not less than four judges of the High Court, plus such other justices of the superior courts of judicature as the Chief Justice may assign. The new constitution anticipates the creation of several divisions of the High Court as provided in subsection (6). The High Court has unlimited original jurisdiction in civil and criminal matters, appellate jurisdiction as prescribed by the Constitution or any other law. In this regard the High Court accepts matters on appeal from the Magistrates' Courts. It also has revisional jurisdiction.

The Constitution introduces a clearly spelt out human rights component to the jurisdiction of the High Court. In section 151(2) the High Court is granted jurisdiction to enforce the fundamental human rights and freedoms guaranteed by the Constitution. Thus it can hear and determine any matter of a constitutional nature.

Subsection (3) clears what hitherto was a murky zone by providing that the High Court has no original or appellate jurisdiction in any matter in which the Industrial Court has exclusive jurisdiction. Further the High Court's power to deal with matters touching on Swazi law and custom is limited by subsection (3)(a) which spells out that the court has no original but has review and appellate jurisdiction in matters in which a Swazi Court has jurisdiction. The same obtains as regards matters in which a Court Martial has jurisdiction.

Magistrates' Court

Magistrates Courts are not courts of record. They are established by provisions of the Magistrates Courts Act, and are presided over by judicial officers employed as civil servants (magistrates). Their decisions are not binding on other courts.

Specialist Courts in Swaziland

Apart from the High Court and Supreme Court which are ordinary courts, Swaziland also has specialist courts set up to deal with particular matters. These are creatures of statute, with limited jurisdiction as set out in the legislation establishing them. The Industrial Court and Swazi National Courts are examples of specialist courts in Swaziland. Swaziland does not, however have small claims courts. This has the effect of denying the indigent aggrieved person the opportunity to access justice, especially since Swaziland does not have a legal aid system.

The Industrial Court

The Industrial Court was established by the Industrial Relations Act of 2000. It has jurisdiction over matters that touch on industrial relations, the

employer-employee relationship.

Swazi National Courts

The Swazi National Courts (Swazi Courts) were established by the Swazi Courts Act 80 of 1950. They have jurisdiction on matters falling under customary law, and can only handle matters involving members of the Swazi nation. Although the term 'members of the Swazi nation' is not defined, these courts have increasingly been handling cases involving non-members of the Swazi nation. Legal representation is in terms of the Act not allowed in proceedings of these courts.

Swazi Courts are notorious for their quick justice. They are presided over by Court Presidents, who are presumably well versed in Swazi customary law. In dispensing their quick 'justice', they either impose fines, order compensation for the victim (such as return of stolen items or their monetary value) as well as custodial sentences. The rules of natural justice are dispensed with here. It is not clear whether the doctrine of *res judicata* applies here. Assuming the Swazi Courts determine an assault case with finality, and the victim subsequently dies. It is not clear whether the accused can rely on *res judicata* in the High Court, since the Swazi Courts do not have jurisdiction over offences such as murder and culpable homicide.

Children's Court

Swaziland does not have dedicated children's courts to deal with issues involving minors. Currently the High Court has a children's wing which facilitates all matters involving minors. This is a child friendly wing that allows minors to participate in judicial proceedings in conditions that are favourable to them. Hence children can testify in a protected environment without intimidation from their aggressors.

Legal Aid

Swaziland does not have a criminal legal aid system, save for *pro deo* counsel offered by the state in capital cases. Section 21(2)(c) of the Constitution provides that a person charged with a criminal offence shall be entitled to legal representation at the expense of government in the case of any offence which carries a sentence of death or life imprisonment. The Constitution only cemented the hitherto prevailing position regarding criminal aid. Due to prohibitive costs of counsel, many indigent accused go to trial unrepresented. The amount of damage and violation of human rights occasioned on such accused from the moment of arrest to conviction cannot be overemphasized. The fact that certain cases are submitted to Swazi Courts for determination under customary law where no legal representation is allowed does not redeem the situation.

Civil Court Legal Aid

The state does not offer legal aid in civil matters. The Constitution is silent on this matter.

Legal Aid by Private Institutions

Certain private institutions such as non-governmental organisations (NGO) do provide some form of legal aid to indigent persons. This is mostly done in matters of maintenance, inheritance and domestic or sexual abuse. Since these are donor funded entities, their interventions are usually limited by donor preferences and scarcity of funds. There is a great need for an increase in the number of such organisations. There is also need to address the competing interests of private law practice and working for a legal aid NGO. Whilst some NGOs are able to attract good personnel through favourable salaries, the turn over is otherwise high due to management styles that do not go down well with their personnel. There is a need to address the founder's syndrome in some NGOs that offer legal aid, to prevent high staff turn over and ensure retention of qualified personnel and efficiency of the services provided.

Law Reports

Swaziland has a law report series known as the Swaziland Law Reports (SLR). According to AJGM Sanders, the publication of law reports started as an initiative of Sir Harold Willian in 1953. Sir Willian was a Commissioner for Territories in Southern Africa, namely Basutoland, Bechuanaland and Swaziland and he was Chief Justice in each of these territories. Initially the law reports were published as High Commission Territories Law Reports (HCTLR) by the High Court, Maseru in Basutoland. In the latter half of 1966 Basutoland and Bechuanaland moved towards independence and the HCTLR ceased to exist, and each country began publishing its own reports. Swaziland produced the first SLR volume in 1969.

The SLR series is no longer published, making it difficult to follow legal developments within the Swazi legal system. The last publication was in the 1980s. Cases from both the High Court and the Supreme Court can now be obtained by making photocopies from the High Court registry. Those from the Industrial Court and the Industrial Court of Appeal can be accessed the same way.

Since South African cases have persuasive value in the courts of Swaziland, South African Law Reports are used to a large extent. Swazi cases also appear in the African Human Rights Law Reports, such as *Gwebu and Another v Rex* (2002) AHRLR 229 (SwCA 2002).[\[vi\]](#)

Citation of the Swaziland law reports often starts with the words The Swaziland Law Reports, followed by the year. The SLR does not make use of volume in its publications, hence after the year of publication will follow the page in which the case appears. For example, the following case *R v Dlamini* SLR 1980-86, 25 would be cited as 'R v Dlamini, Swaziland Law Reports 1980-86 at page 25'.

Since the last published series of the SLR was in 1986, there are no official law reports that are published. However, reports of cases can still be obtained by photocopying or scanning reports from the High Court registry. Civil cases are usually cited as, for example *Jon Doe v The People's Bank Ltd*, High Court Civil Case No.2466/2002, Unreported. Criminal cases follow a similar mode of citation, e.g. *Gwebu George and Another v Rex* High Court Criminal Case No.11/2002, Unreported. Matters that went on appeal are cited as, for example *Professor Dlamini v The King*, Appeal Case No.41/2000.

The SLR are available in various places such as the law library in the Ministry of Justice in Mbabane as well as the law section and Swaziana section of the University of Swaziland library in Kwaluseni. The national libraries in both Mbabane and Manzini also house these reports. This is in respect of the series from 1969 to 1986 when the last publication was produced. South African law reports can also be accessed in the University of Swaziland law library. South African cases are cited as *Harksen v Lane* NO 1998 (1) SA 300 (CC). The CC denotes that it is a constitutional court decision.

Government Gazettes

The Government of Swaziland publishes a gazette that contains all relevant announcements and enactments or amendments of laws and regulations. It incorporates various government decisions, and once they feature in the Gazette, government decisions and laws and regulations are deemed to have been published and validly promulgated.

Gazettes are used by both the government and ordinary citizens to convey information to the public. The following are some of the normal uses of gazettes:

- Notices to creditors and debtors in administration of estates.
- Publication of amendments to existing laws, regulations and rules.
- Publication of newly enacted laws, regulations and rules.
- Publication of royal decrees.
- Invitation for tenders from government departments.
- Issuance of trading licences for companies.
- Notices of liquidation of companies.
- Publication of title deeds and deeds of transfer in respect of property.

Government gazettes are obtainable from the Ministry of Justice Law Library at the cost of E1.00 per page (approximately USD \$0.20) or at the government printers in Mbabane (Webster Print) at E25.00 per bound copy (approximately USD \$4).

Law Schools

Swaziland has one university, the University of Swaziland. It has a law department within the Faculty of Social Sciences that offers a Diploma in Law, and a Bachelor of Laws degree. The Bachelor of Arts in Law degree was phased out a few years ago in favour of a new five-year LLB degree. The Diploma is offered by the Institute of Distance Education within the university. Human rights teaching was not available until the introduction of the new five-year LLB programme.

Access to Information

Access to information in Swaziland is relatively impinged upon. Accessing records at the High Court registry is always laced with difficulties. A simple process like following up a case in the High Court can prove impossible. The information seeker is usually sent from pillar to post, bombarded with a barrage of questions and told they cannot be assisted for one reason or another. The often quoted reason for denial of access to public documents is 'confidentiality'. Other public offices adopt the same attitude to seekers of information. Access to information is also hindered by the high cost of purchasing that particular information, such as legislation and other government gazettes.

The Law Society of Swaziland

As in most other jurisdictions, the Law Society of Swaziland regulates the legal profession. It is a body set up under the Legal Practitioners Act. Amongst others, the law society seeks to uphold principles of the rule of law, law reform and regulate admission and conduct of legal practitioners in Swaziland.

Civil Society

Swaziland has a variety of non-governmental organisations working on issues of human rights and related fields, some of which are listed below:
Lawyers for Human Rights Swaziland
Centre for Human Rights and Development Swaziland
Council of Churches Peace and Justice Wing

Websites Visited

www.biggameparks.org
www.yongenawe.com
www.chr.up.ac.za
www.times.co.sz
www.gov.sz

[i] Joshua Bheki Mzizi, "The Dominance of the Swazi Monarchy and the Moral Dynamics of Democratisation of the Swazi State", *Journal of African Elections*, vol. 3, no. 1, June 2004, p. 102

[ii] Defending the Swazi king's absolute governing powers, one Petros Mbhamali, a royalist, said King Mswati was appointed by God, and hence no one should go against that which God has set up. See http://headheeb.blogmosis.com/2004/09/calling_jeanpaul_marat.php, accessed 01/05/2007.

[iii] *Crisis Group Policy Briefing Paper No.29*, 14 July 005, page 2.

[iv] See *Conflicts in Natural Resources Management in the Wildlife Sector in Swaziland*, A report by Douglas Consulting, May 2004. See also <http://www.yongenawe.com/02/programmes/esej.html>, accessed 28 April 2005.

[v] See *Conflicts in Natural Resources Management in the Wildlife Sector in Swaziland*, A report by Douglas Consulting, May 2004. See also <http://www.yongenawe.com/02/programmes/esej.html>, accessed 28 April 2005.

[vi] See <http://www.chr.up.ac.za> for these reports.

